



May 18, 2000

Mr. Richard A. Munisteri
General Counsel
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

OR2000-1984

Dear Mr. Munisteri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135359.

The Comptroller of Public Accounts (the "Comptroller") received a request for all electronic correspondence sent to or from a specific former employee of the Comptroller between November 1, 1999 and March 1, 2000. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information at issue.¹

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses common law privacy. Information is confidential under common law privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You argue that a small packet of electronic correspondence is confidential under common law privacy. We agree that these communications are confidential under common law privacy as encompassed by section

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

552.101. Therefore, the Comptroller must withhold these documents.²

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* You argue that, with the exception of the confidential documents discussed above, the submitted documents fall under section 552.107. We agree that most of these documents constitute privileged attorney-client communications and are therefore excepted under section 552.107. However, several items of correspondence contain only factual material and therefore do not fall under section 552.107. Accordingly, while the Comptroller may withhold most of the documents for which it has claimed section 552.107, it must release the types of documents that we have marked.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

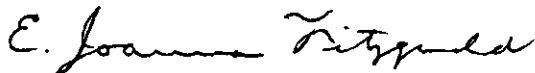
²It is in regard to this same packet of electronic correspondence that you also raise section 552.117. Because section 552.101 is dispositive of these documents we do not address your argument concerning section 552.117, except to note that you raised this argument after the Comptroller’s ten-day deadline for submitting exceptions to disclosure had expired. See Gov’t Code § 552.301.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 135359

Encl: Submitted documents

cc: Mr. Russell Gold
San Antonio Express-News
1003 Congress Avenue, Suite 430
Austin, Texas 78701
(w/o enclosures)